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IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SAN JOSE DIVISION

Adobe Systems Inc.,

Plaintiff,

vs.

JACQUE OJADIDI aka JAQUE OJADIDI, an individual and dba BUYBARGAINDEALS and C WEB; XMICRO LLC; and DOES 1-10, inclusive,

Defendant.

Civil Action No.: 5:10-CV-2388 LHK

ANSWER TO COMPLAINT FOR COPYRIGHT INFRINGEMENT AND TRADEMARK INFRINGEMENT

DEMAND FOR JURY TRIAL

ANSWER TO COMPLAINT

COMES NOW Defendants JACQUE OJADIDI ("Ojadidi") and XMICRO LLC ("XMicro") (collectively, "Defendants") and herewith answer the Complaint of Adobe Systems Inc. ("Adobe" or "Plaintiff") as follows:

1. Answering Paragraph 1 of the Complaint, Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in said paragraph, and on that basis deny each and every allegation contained therein.

2. Answering Paragraph 2 of the Complaint, Defendants are without sufficient knowledge

or information to form a belief as to the truth of the allegations contained in said paragraph, and on that basis deny each and every allegation contained therein.

3. Answering Paragraph 3 of the Complaint, Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in said paragraph, and on that basis deny each and every allegation contained therein.

4. Answering Paragraph 4 of the Complaint, Defendants deny each and every allegation contained therein.

5. Answering Paragraph 5 of the Complaint, Defendants admit that this Court has subject matter jurisdiction.

6. Answering Paragraph 6 of the Complaint, Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in said paragraph, and on that basis deny each and every allegation contained therein.

7. Answering Paragraph 7 of the Complaint, Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in said paragraph, and on that basis deny each and every allegation contained therein.

8. Answering Paragraph 8 of the Complaint, Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in said paragraph, and on that basis deny each and every allegation contained therein.

9. Answering Paragraph 9 of the Complaint, Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in said paragraph, and on that basis deny each and every allegation contained therein.

10. Answering Paragraph 10 of the Complaint, Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in said paragraph, and on that basis deny each and every allegation contained therein.

11. Answering Paragraph 11 of the Complaint, Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in said paragraph, and on that basis deny each and every allegation contained therein.

12. Answering Paragraph 12 of the Complaint, Defendants admit the allegations contained in the first and second sentences. Ojadidi admits that he does or has done business under the eBay user IDs "cweb," "xmicro," "xmmicro," "buybargaindeal," www.xmmicro.com, www.buybargaindeals.com, and www.xmicro.com. Ojadidi denies that he is doing business under www.cweb.com. Defendants are without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in said paragraph, and on that basis deny each and every remaining allegation contained therein.

13. Answering Paragraph 13 of the Complaint, Defendants deny each and every allegation contained therein.

14. Answering Paragraph 14 of the Complaint, Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in said paragraph, and on that basis deny each and every allegation contained therein.

15. Answering Paragraph 15 of the Complaint, Ojadidi admits that he sells products on eBay. However, Defendants are without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in said paragraph, and on that basis deny each and every remaining allegation contained therein.

16. Answering Paragraph 16 of the Complaint, Defendants admit that they have no formal relationship with Plaintiff. However, Defendants deny making the alleged unauthorized copies and contend that Ojadidi only purchased copies of the software from authorized Adobe re-sellers, such as MacMall.com, PCMall.com and OnSale.com. Defendants are without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in said paragraph, and on that basis deny each and every remaining allegation contained therein.

17. Answering Paragraph 17 of the Complaint, Ojadidi admits that official Adobe products appear to display Adobe's marks. Defendants are without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in said paragraph, and on that basis deny each and every remaining allegation contained therein.

18. Answering Paragraph 18 of the Complaint, Defendants are without sufficient knowledge

or information to form a belief as to the truth of the remaining allegations contained in said paragraph, and on that basis deny each and every remaining allegation contained therein.

19. Answering Paragraph 19 of the Complaint, Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in said paragraph, and on that basis deny each and every allegation contained therein.

20. Defendants re-assert and hereby incorporate their previous responses to the identified paragraphs.

21. Answering Paragraph 21 of the Complaint, Defendants deny each and every allegation contained therein.

22. Answering Paragraph 22 of the Complaint, Defendants deny each and every allegation contained therein.

23. Answering Paragraph 23 of the Complaint, Defendants deny each and every allegation contained therein.

24. Answering Paragraph 24 of the Complaint, Defendants deny each and every allegation contained therein.

25. Defendants re-assert and hereby incorporate their previous responses to the identified paragraphs.

26. Answering Paragraph 26 of the Complaint, Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in said paragraph, and on that basis deny each and every allegation contained therein.

27. Answering Paragraph 27 of the Complaint, Defendants deny each and every allegation contained therein.

28. Answering Paragraph 28 of the Complaint, Defendants deny each and every allegation contained therein.

29. Answering Paragraph 29 of the Complaint, Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in said paragraph, and on that basis deny each and every allegation contained therein.

30. Answering Paragraph 30 of the Complaint, Defendants deny each and every allegation contained therein.

AFFIRMATIVE DEFENSES

1. As and for a first separate and distinct affirmative defense to Plaintiff's Complaint, and each and every cause of action thereof, Defendants allege that Plaintiff's Complaint fails to state facts sufficient to constitute a cause of action against Defendants.

2. As and for a second separate and distinct affirmative defense to Plaintiff's Complaint, and each and every cause of action thereof, Defendants allege that the claims are barred by the applicable Statutes of Limitation.

3. As and for a third separate and distinct affirmative defense to the Complaint, and each and every cause of action thereof, Defendants allege that the claims are barred by the Doctrine of Laches.

4. As and for a fourth separate and distinct affirmative defense to Plaintiff's Complaint, and each and every cause of action thereof, Defendants allege that the claims are barred by the Doctrine of Waiver.

5. As and for a fifth separate and distinct affirmative defense to Plaintiff's Complaint, and each and every cause of action thereof, Defendants allege that the claims are barred by the Doctrine of Estoppel.

6. As and for a sixth separate and distinct affirmative defense to Plaintiff's Complaint, and each and every cause of action thereof, Defendants allege that the claims are barred by the Doctrine of Collateral Estoppel.

7. As and for a seventh separate and distinct affirmative defense to the Complaint, and each and every cause of action thereof, Defendants allege that the claims are barred by the Statute of Frauds.

8. As and for an eighth separate and distinct affirmative defense to the Complaint, and each and every cause of action thereof, Defendants allege that Plaintiff failed to mitigate Plaintiff's damages. The damages claimed by Plaintiff could have been mitigated by due diligence on

Plaintiff's part, or by one acting under similar circumstances. The failure to mitigate is a bar to recovery under the Complaint.

9. As and for a ninth separate and distinct affirmative defense to the Complaint, and each and every cause of action thereof, Defendants allege on information and belief that the sole and proximate cause of the acts complained of by Plaintiff were due to the acts and/or omissions of persons and entities other than Defendants.

10. As and for a tenth separate and distinct affirmative defense to the Complaint, and each and every cause of action thereof, Defendants allege that their conduct was not the cause in fact, or the proximate cause, of any of the losses alleged by Plaintiff.

11. As and for an eleventh separate and distinct affirmative defense to the Complaint, and each and every cause of action thereof, Defendants allege that Plaintiff's claims are barred due to Plaintiff's failure to join indispensable parties, including, without limitation, MacMall.com, PCMall.com and OnSale.com.

12. As and for an twelfth separate and distinct affirmative defense to the Complaint, and each and every cause of action thereof, Defendants allege that Plaintiff's claims are barred due to the Doctrine of Misjoinder or Nonjoinder; for example, MacMall.com, PCMall.com and OnSale.com are the proper parties to this action.

13. As and for a thirteenth separate and distinct affirmative defense to the Complaint, and each and every cause of action thereof, Defendants allege that the claims are barred in whole or in part by the privilege of fair competition.

14. As and for a fourteenth separate and distinct affirmative defense to the Complaint, and each and every cause of action thereof, Defendants allege that Plaintiff's claims are barred by the Doctrine of Consent.

15. As and for a fifteenth separate and distinct affirmative defense to the Complaint, and each and every cause of action thereof, Defendants allege that Plaintiff's claims are barred by Plaintiff's abandonment of its alleged rights, including under relevant contract rights, copyrights and/or privacy rights.

16. As and for a sixteenth, separate and distinct affirmative defense to the Complaint, and each and every cause of action thereof, Defendants alleges that Plaintiff's claims are barred due to the fact that Plaintiff failed to contribute copyrightable subject matter to any of the alleged infringed works.

17. As and for a seventeenth, separate and distinct affirmative defense to the Complaint, and each and every cause of action thereof, Defendants alleges that Plaintiff's claims are barred due to the fact that Plaintiff was not an author of the alleged infringed works.

18. As and for a eighteenth, separate and distinct affirmative defense to the Complaint, and each and every cause of action thereof, Defendants alleges that Plaintiff's claims are barred by the First Sale Doctrine.

19. As and for an nineteenth separate and distinct affirmative defense to the Complaint, and each and every cause of action thereof, Defendants allege that Plaintiff's claims are barred because Defendants had an express and/or implied license to use the intellectual property in which Plaintiff alleges to have rights.

20. As and for a twentieth, separate and distinct affirmative defense to the Complaint, and each and every cause of action thereof, Defendants alleges that Plaintiff's claims are barred due to the Doctrine of Copyright Misuse.

21. As and for a twenty-first, separate and distinct affirmative defense to the Complaint, and each and every cause of action thereof, Defendants alleges that Plaintiff's claims are barred by the First Sale Doctrine.

22. As and for a twenty-second, separate and distinct affirmative defense to the Complaint, and each and every cause of action thereof, Defendants alleges that Plaintiff's claims are barred in whole or in part by the Doctrine of Innocent Infringement.

23. As and for a twenty-third separate and distinct affirmative defense to the Complaint, and each and every cause of action thereof, Defendants allege that Plaintiff's claims are barred by Plaintiff's lack of standing to sue.

24. As and for a twenty-fourth separate and distinct affirmative defense to the Complaint, and

each and every cause of action thereof, Defendants allege that Plaintiff's claims are barred by the Doctrine of Acquiescence.

25. As and for a twenty-fifth separate and distinct affirmative defense to the Complaint, and each and every cause of action thereof, Defendants allege that Plaintiff's claims are barred by the Doctrine of Fair Use.

26. As and for a twenty-sixth, separate and distinct affirmative defense to the Complaint, and each and every cause of action thereof, Defendants alleges that Plaintiff's claims are barred by a defect in the copyright registration(s).

27. As and for a twenty-seventh, separate and distinct affirmative defense to the Complaint, and each and every cause of action thereof, Defendants alleges that Plaintiff's claims are barred by a defect in the trademark registration(s).

28. As and for a twenty-eighth, separate and distinct affirmative defense to the Complaint, and each and every cause of action thereof, Defendants alleges that Plaintiff's claims are barred due to Plaintiff's failure to register, or to timely register, the alleged copyrights.

29. As and for a twenty-ninth, separate and distinct affirmative defense to the Complaint, and each and every cause of action thereof, Defendants alleges that Plaintiff's claims are barred due to Plaintiff's failure to register, or to timely register, the alleged trademarks.

30. As and for a thirtieth, separate and distinct affirmative defense to the Complaint, and each and every cause of action thereof, Defendants alleges that Plaintiff's claims are barred by the Forum Non Conveniens Doctrine.

31. As and for a thirty-first, separate and distinct affirmative defense to the Complaint, and each and every cause of action thereof, Defendants alleges that Plaintiff's claims are barred due to improper, or the omission of, copyright notice.

32. As and for a thirty-second separate and distinct affirmative defense to the Complaint, and each and every cause of action thereof, Defendants allege that Plaintiff's claims are barred by the Doctrine of Unjust Enrichment.

33. As and for a thirty-third, separate and distinct affirmative defense to the Complaint, and

each and every cause of action thereof, Defendants alleges that Plaintiff's claims are barred by the First Amendment to the U.S. Constitution.

WHEREFORE, these answering Defendants pray for judgment as follows:

1. That Plaintiff takes nothing by the Complaint;
2. For reasonable attorney's fees and costs of suit incurred herein; and
3. For such other and further relief as the Court deems just and proper.

Dated: September 9, 2010 THE MORALES LAW FIRM

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David P. Morales,
Attorney for Defendants

JURY TRIAL DEMAND

Defendants hereby demand a jury trial as provided by Rule 38(a) of the Federal Rules of Court.

Dated: September 9, 2010 THE MORALES LAW FIRM

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David P. Morales,
Attorney for Defendants